

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 10, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP466

Cir. Ct. No. 2013CV70

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

LEWIS ALTMAN, JR.,

PLAINTIFF-APPELLANT,

V.

MARK HEISE, D. LACOST AND K. SPLETTER,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Chippewa County:
RODERICK A. CAMERON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Lewis Altman, Jr., pro se, appeals a sua sponte dismissal order of prisoner litigation. We affirm.

¶2 Altman is an inmate at Stanley Correctional Institution, serving sentences for attempted first-degree intentional homicide and three counts of

first-degree recklessly endangering safety. On January 3, 2013, Altman initiated an action seeking review of administrative decisions made by the Department of Corrections. On January 10, the circuit court dismissed the action and Altman failed to appeal this decision. *See Altman v. Heise, et al.*, Chippewa County case No. 2013CV3.

¶3 On February 11, 2013, Altman filed another action. Altman titled this filing, “Civil Rights Complaint Under 42 U.S.C.S. §1983.” On February 20, the circuit court dismissed the complaint on its own motion on the grounds of claim preclusion. This appeal follows.

¶4 Under WIS. STAT. § 802.05(4), “a court shall review the initial pleadings as soon as practicable after the action or special proceeding is filed with the court if the action or special proceeding is commenced by a prisoner,” and “may dismiss the action or special proceeding ... without requiring the defendant to answer the pleading if the court determines that the action or special proceeding ... [f]ails to state a claim upon which relief may be granted.”¹

¶5 Here, the court complied with WIS. STAT. § 802.05(4). It is apparent from the record that the court reviewed Altman’s filing, compared it to his filing in case No. 2013-CV-3, and concluded that it failed to state a claim upon which relief may be granted:

Except for th[e] caption on his complaint, the entire document is identical in language to Altman’s filing in Chippewa County case 13CV3. The only difference is that much of the present complaint is more neatly typed. The Hon. Steven R. Cray dismissed case 13CV3 because it failed to state a cause of action. The proper remedy if

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

Altman disagrees with the dismissal of his first filing is to appeal the dismissal to the Court of Appeals. Because all of the issues in the instant case are identical to Judge Cray's case, claim preclusion applies. The court, on its own motion, dismisses the complaint with prejudice.

¶6 The circuit court correctly concluded that claim preclusion applies. The parties are identical, “the entire document is identical in language” to Altman's previous filing except for the caption, and there was a final judgment in the previous filing. *See Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 551, 525 N.W.2d 723 (1995).

¶7 Moreover, it is apparent from Altman's complaint that he is seeking review of a program review committee's decision issued August 18, 2011. Such a review is brought by way of common law certiorari. *See State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 549-50, 185 N.W.2d 306 (1971). A prisoner seeking review of such an administrative decision must petition the court for certiorari review within forty-five days after the final administrative decision. WIS. STAT. § 893.735(2).

¶8 Altman's first filing, on January 3, 2013, was submitted over a year after the final administrative decision. The present case was filed on February 11, 2013. Failure to timely file a petition for certiorari review requires dismissal for lack of subject matter jurisdiction. *See State ex rel. Schatz v. McCaughtry*, 2003 WI 80, ¶¶31-32, 263 Wis. 2d 83, 664 N.W.2d 596. Altman was untimely in seeking judicial review and the circuit court properly dismissed the matter.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

